

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, D. C. 20554

In re )  
 )  
 Amendment of Section 73.239 ) MM Docket No. \_\_\_\_\_  
 of the Commission's Rules ) RM- \_\_\_\_\_  
 (pertaining to broadcast )  
 licensees which control )  
 antenna farms or multiple )  
 broadcast antenna towers) )

TO: The Commission

**PETITION FOR RULEMAKING**

Royce International Broadcasting Company, licensee of FM Broadcast Station KWOD, Sacramento, California (Royce or KWOD), by its attorney, and pursuant to Section 1.401 of the Commission's Rules, hereby respectfully submits this Petition for Rulemaking, and urges the Commission to amend Section 73.239 of its Rules, 47 C.F.R. §73.239, to recodify the existing rule text as subsection (a), and to add the following text as new subsection (b):

No FM broadcast station license or renewal of FM broadcast station license will be granted to any person who (i) owns, leases or controls an antenna farm, tower or structure utilized as the transmitter and/or antenna site for two or more existing broadcast stations not under common control, (ii) utilizes said antenna farm, tower or structure in connection with its own broadcast station, and (iii) does not make available to the

other existing stations at said antenna farm, tower or structure the use of the antenna farm, tower or structure on a continuing basis on terms which are commercially reasonable and consistent with fair market rental prices. For purposes of this subsection, an antenna farm is any parcel (or contiguous parcels) of land under common control or management which contain two or more towers or structures utilized in connection with the antennas of FM Broadcast Stations.

In support whereof, the following is shown:

**Preliminary Statement**

1. Section 1.401(c) of the Rules requires a petition such as this to (i) set forth the text of the proposed amendment to the rules, (ii) state facts, views, arguments and data in support of the proposed amendment, and (iii) indicate how the interests of petitioner would be affected. The preamble of this Petition sets forth the proposed amendment to the Commission's Rules. The following statement of facts indicates Royce's interests that would be affected were the Commission to amend its rules as proposed herein. Thereafter, Royce argues why the proposed amendment should be adopted.

**Royce's Interests**

1. The facts of this case are that KWOD(FM) is a stand alone FM station. It is the only FM station in Sacramento, California which is not owned by a group

broadcaster; it is owned by Edward Royce Stolz II, a local resident, who manages his station personally on a daily basis. Under Mr. Stolz, KWOD has served the public interest in the Sacramento region for some twenty years.<sup>1</sup>

2. KWOD is a short-spaced Class B FM station. The station to which it is short-spaced is Class B station KEZR(FM), on co-channel 106.5 MHz in San Jose, California. As we demonstrated in our "Petition to Deny" in this case, the KEZR transmitter is located southwest of the KWOD transmitter (bearing 202°) at a distance of 153.62 kilometers. Under Section 73.207 of the Rules, 241 kilometers are required. Thus, the short-spacing between KWOD and KEZR is 87.38 kilometers.<sup>2</sup>

3. KWOD operates from a transmitter site known as the "White Rock" antenna farm, which is located approximately 20 miles east of downtown Sacramento, in the first group of foothills of the Sierra Nevada mountains. Suburban

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<sup>1</sup>The Commission has made findings of fact and conclusions of law in the past that Royce and KWOD provide a valuable service to Sacramento. In *Royce International Broadcasting Co.*, 4 FCC Rcd 7139 (Rev. Bd. 1989), rev. den. 5 FCC Rcd 7063 (1990), recons. den. 6 FCC Rcd 2601 (1991), the Review Board confirmed that: "KWOD enjoys the highest regard in its community" (at ¶23); "KWOD(FM) has demonstrated a 'positive and dedicated commitment to serving its service area' and its record . . . 'is sound, favorable and substantial' (at ¶26).

<sup>2</sup>In English measurements, the transmitter sites of KWOD and KEZR are 95.48 miles apart; Section 73.207 requires a spacing of 149.78 miles; and the short-spacing is 54.30 miles.

communities such as Folsom, El Dorado Hills and Cameron Park are in the vicinity of the antenna farm. The operator of the antenna farm is The Brown Organization, licensee of two FM stations authorized to Sacramento, California, KXOA-FM and KQPT. KQPT's transmitter is located at White Rock.

4. Despite having maintained its transmitter site at White Rock for some two decades, KWOD is a month-to-month tenant at White Rock. KWOD is subject to being evicted by Brown at any time, and for any reason.

5. Royce fears that, if it is denied the future use of the White Rock site, KWOD will go off the air. This is because of the following factors: (1) it is going to be difficult to get a waiver of the short-spacing rule to move the KWOD(FM) transmitter closer to downtown Sacramento, and thus closer to KEZR's transmitter site; (2) moving the transmitter site east, away from Sacramento, will place the foothills between KWOD's transmitter and Sacramento, thereby preventing KWOD line-of-sight coverage to Sacramento; and (3) restrictive zoning laws and procedures make it all but impossible to effectuate an expeditious change of transmitter site.

6. Royce has raised his concerns by challenging the assignment of license of KQPT(FM), Sacramento, California,

from its former licensee, Duchossois Communications Company of California, Inc., to Brown (File No. BALH-920925GU). Therein, Royce raised an argument based on existing Section 73.239 of the Rules and his belief that Brown desires to evict KWOD from the White Rock site. Royce's "Petition to Deny" was denied by the Audio Services Division in an unreported letter released on February 12, 1993; reconsideration was also denied on March 23, 1995; and the Commission denied Royce's "Application for Review". ***Duchossois Communications Company of California, Inc.***, FCC 95-278, 10 FCC Rcd -- (July 24, 1995). Royce is today seeking reconsideration of that action.

7. Therein, the Commission has stated its view that Section 73.239 does not apply to the KWOD case, because, *inter alia*, KWOD cannot prove that White Rock is a "unique site". In our view, the Commission's interpretation of Section 73.239 overlooks today's realities; that, for competitive or other reasons, broadcast licensees who control antenna farms or common towers containing the transmitting equipment of competing stations hold life and death powers over the ability of those competitors to broadcast. It therefore seems reasonable to us that the Commission, as the defender of the public interest, ought to

have regulations which protect full and fair broadcast competition while not depriving broadcast licensees who control such antenna farms or common towers of their rights to be paid a fair market rental price and to enjoy commercially reasonable terms for the rental of their land or towers to others.

8. This, then, is Royce's interest in this proceeding, and in the amendment to Section 73.239 of the Commission's Rules.

**Argument**

9. All radio stations are licensed by the Commission to serve the public interest as public trustees. It is inimical to the public interest to have a situation where one broadcast licensee, in its position as the controlling party of a common antenna site, can hold life and death power over a competitor.

10. In the continuing consolidation of radio broadcast licenses into fewer and fewer hands, the circumstances in which Royce finds itself will happen in markets all across the United States. The independent broadcaster with just one FM station who is a tenant of an antenna farm or a common tower or structure controlled by another broadcaster in his market will be caught in a squeeze; should Congress

pass and the President sign the pending telecommunications legislation, entities will be able to buy an unlimited number of radio stations in a given market. Some protection must be given to the independent operator from being squeezed out of business by "the big guys" for reasons having nothing to do with the quality of programming or the competitiveness of advertising rates.

11. In the past, it has been the policy of the Commission to make regulations and to enforce such regulations where it finds evidence of anti-competitive behavior. See, e.g., ***Evaluation of the Syndication and Financial Interest Rules***, 8 FCC Rcd 8270, at ¶51 (1993). In this Petition, we have sought to point out an area of potential anti-competitive behavior which apparently falls through the cracks of the Commission's rules as they are currently written.

**Conclusion**

WHEREFORE, Royce International Broadcasting Company urges that this Petition for Rulemaking **BE GRANTED** and that Section 73.239 of the Commission's Rules **BE AMENDED** in accordance with the text of the proposed amendment stated herein.

Respectfully submitted,

**ROYCE INTERNATIONAL BROADCASTING  
COMPANY**

CORDON AND KELLY  
Post Office Box 6648  
Annapolis, MD 21401

By   
Dennis J. Kelly  
Its Attorney

August 23, 1995



**CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing "Petition for Rulemaking" were served by first-class United States mail, postage prepaid, on this 23rd day of August, 1995, upon the following:

John L. Tierney, Esquire  
Tierney and Swift  
1001 - 22nd St., NW, Suite 350  
Washington, D. C. 20037  
*Counsel for Duchossois Communications Company  
of California, Inc.*

Marnie K. Sarver, Esquire  
Reed Smith Shaw & McClay  
Suite 1100, East Tower  
1301 K Street, N. W.  
Washington, D. C. 20005  
*Counsel for The Brown Organization*

  
Dennis J. Kelly